IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3631 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OM PRAKASH S/O GURU CHARAN DASS

Versus

O N G C

Appearance:

1. Special Civil Application No. 3631 of 1996

MR TR MISHRA for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2-3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is directed against the

discrimination meted out to the petitioner by the respondent-Oil & Natural Gas Corporation Limited by not granting benefits of due promotion to the post of Executive Engineer, after his retirement, and, thereby, depriving him of consequential terminal benefits, etc. as per the Rules existing in the respondent-Corporation.

2. It is the case of the petitioner that the petitioner was appointed as Fitter in the respondent-Corporation on 28th March 1968 and, thereafter, promoted to the post of Chargeman Assistant Engineer (Foreman), on 1.4.1982. Subsequently, the petitioner was promoted as Assistant Executive Engineer on 25.3.1992 with retrospective effect from 1.1.1985. The petitioner retired from service on 31st August 1992 and, according to the petitioner, he was due for promotion to the post of Executive Engineer with effect from 1.1.1991, but, as the earlier promotion was not granted in time, his next promotion as Executive Engineer (Mech.) was also withheld, and, thereafter, the petitioner was superannuated from the service.

2.1 According to the petitioner, even other employees similarly situated like the petitioner have been given promotion to the post of Executive Engineer with effect from 1.1.1991 and the case of the petitioner was not considered. The petitioner, therefore, made representation to the respondent-Corporation on 2.8.1994 and 26.11.1994 to treat his case on par with the similarly situated persons and, even in a given case, the juniors to the petitioner were also given the benefit of promotion to the post of Executive Engineer with effect from 1.1.1991 and, therefore, he might also be given similar benefits.

3. It is pertinent to note that the petitioner retired from service on 31.8.1992 and this petition was filed in the month of August 1996, which, ultimately, came up for hearing on 30.8.1996, when, notice was issued and, subsequently, by order dated 18.3.1997, Rule came to be issued in this matter. Therefore, even after retirement of the petitioner, this petition was filed after lapse of four years. The petitioner has stated in the petition that, after retirement, the petitioner had settled down at his home town at Ludhiana (Punjab) and, therefore, it was difficult for him to come to Ahmedabad to file a petition and he was hopeful about his representations submitted to the respondent-Corporation.

4. Learned advocate for the petitioner, Mr. T.R. Mishra, has submitted that, though the petitioner was

eligible to be considered for promotion for the post of Executive Engineer, which was due from 1.1.1991, the respondent-Corporation acted discriminately and in arbitrary manner and the petitioner was superseded by his juniors at Sr.Nos. 205, 204, 195 and 197, who figured in the seniority list published by the respondent-Corporation, since the petitioner was at Sr. No.186. Learned advocate Mr. T.R. Mishra, for the petitioner, has further contended that, during his service, the petitioner had received meritorious certificates for the work which he had performed and, therefore, on account of seniority as well as on merit also, the case of the petitioner ought to have been considered by the respondent-Corporation for the post of Executive Engineer.

4.1 Learned advocate Mr. T.R. Mishra, for the petitioner, has taken this Court to several representations submitted by the petitioner at Annexure "A", "B" and "C" to the petition, dated 2.8.1994, 29.9.1992, 6.1.1993 and 3.1.1994 respectively, and has submitted that several promotion orders have been given by the respondent-Corporation even after retirement of the employees, and not considering the case of the petitioner on par with those employees amounts to discrimination meted out to the petitioner in an arbitrary manner, which is violative of Articles 14 and 16 of the Constitution of India.

4.2 Learned advocate Mr. T.R. Mishra, for the petitioner, has also submitted that the delay caused in filing this petition is due to pendency of the representations before the respondent-Corporation and, after retirement, the petitioner had settled down at Ludhiana, in Punjab State, and, therefore, the petitioner could not take a decision to pursue the matter immediately and, therefore, delay caused in filing the present petition requires to be condoned.

4.3 The last contention of the learned advocate Mr. T.R. Mishra, for the petitioner, is based on the affidavit-in-rejoinder filed by the petitioner, wherein, it is, emphathetically, submitted that the annual confidential reports relied upon by the respondent-Corporation for not considering the case of the petitioner were not communicated to the petitioner and the petitioner fulfilled the criteria of seniority cum merit on line with several employees who were given such benefits. Learned advocate Mr. T.R. Mishra, for the petitioner, has given certain instances where the employees, who have not passed matriculation examination

and possessing qualification below SSC, were also considered by the respondent-Corporation for promotion to the post of Executive Engineer and, therefore, in all, the action of the respondent-Corporation is required to be quashed and set aside, and the respondent-Corporation is required to be directed to consider the case of the petitioner for promotion to the post of Executive Engineer with all other consequential benefits.

5. Learned advocate Mr. R.H. Mehta, appearing for the respondent-Corporation, has drawn attention of the Court to the affidavit-in-reply and affidavit-in-sur-rejoinder filed by the respondent-Corporation, and has vehemently submitted that, so far as the petitioner is concerned, initially, he was promoted to the post of chargeman with effect from 1.7.1980 and, as per the Recruitment and Promotion Regulations of 1980 framed by the respondent-Corporation, certain qualifications have been prescribed and, according to such Regulations, for further promotion to the post of Assistant Engineer (Mech.), six years of experience as a chargeman is a must. It is also necessary to have an engineering degree and two years of experience and, for a diploma holder, four years of experience, for considering the case for promotion to the post of Assistant Executive Engineer (Mech.). According to the learned advocate Mr. R.H. Mehta, the petitioner was, however, promoted from the post of chargeman to the post of Assistant Engineer (Mech.) under the relaxed criteria with effect from 1.4.1982, though under the statutory regulations, he was not entitled to be promoted. The respondent-Corporation had subsequently relaxed the criteria of experience and qualification for promotion to the post of Assistant Executive Engineer with effect from 1.1.1985 and, therefore, the said benefit was given to the petitioner though he was not educationally qualified to be considered as such. The said promotion was delayed, according to the learned advocate Mr. R.H. Mehta for the respondents, because of various factors and administrative reasons including the fact that the relaxation came into effect subsequently and, before that, there was a stay order from the Sib Sagar Court, Assam, and, therefore, the decision for promotion to the post of Assistant Executive Engineer was delayed for some time.

5.1. However, according to the learned advocate Mr. R.H. Mehta for the respondent-Corporation, for promotion to the post of Executive Engineer from the post of Assistant Executive Engineer, an employee is to be

considered on the basis of four years experience on merit and six years experience on the basis of seniority-cum-fitness. Accordingly, the petitioner was not fulfilling the criteria for being entitled to the benefit of promotion, since the ACR grading of the petitioner was low as per the required criteria and, though he was considered for promotion to the higher post of Executive Engineer (Mech.), he was not given the benefit of promotion. According to the learned advocate Mr. R.H. Mehta for the respondent-Corporation, on taking into consideration overall grading of the petitioner, he was not found meritorious on par with other employees who were in the zone of consideration and, therefore, the petitioner was not promoted to the post of Executive Engineer (Mech.) with effect from 1.1.1991. According to the learned advocate Mr. R.H. Mehta for the respondent-Corporation, the Officers fulfilling the required criteria of ACRs and experience were, accordingly, promoted, whereas, the petitioner did not fulfil the requisite criteria for promotion and, therefore, he was not promoted. According to the learned advocate Mr. R.H. Mehta for the respondent-Corporation, grading given to the petitioner was on the basis of overall assessment of performance of the petitioner and even if the certificate of merit was issued by the respondent-corporation, it was issued for a specific period to the petitioner and the same never reflected the overall assessment of the petitioner on merit. Mr. Mehta has further submitted that only adverse remarks will be communicated to an employee as per the procedure and not over all assessment of the employee, and it is also possible that a junior can get promotion on the strength of his higher merit grading, whereas some seniors having lower merit grading may fell behind the race and, therefore, it is not correct to say that, at the relevant point of time, the petitioner was not considered by the respondent-Corporation for promotion to the post of Executive Engineer. According to Mr. Mehta, because qualification was relaxed, the case of the petitioner was considered along with other under-qualified employees and some of them got selected on the basis of their higher ACR grading while the petitioner could not fulfil the criteria due to his low grading and, therefore, the instances of juniors given by the petitioner are not helpful to him.

5.2 Learned advocate Mr. R.H. Mehta, for the respondent-Corporation has drawn the attention of the Court specifically to the affidavit-in-reply filed by the respondent-Corporation where it is, emphathetically, stated that since the petitioner was neither a degree

holder nor diploma holder, he was not eligible to be considered even for the post of Assistant Executive Engineer, but, due to relaxation in criteria, the benefits were extended to other employees also and, accordingly, the petitioner was earlier considered and, looking to his experience and qualification, he was promoted to the post of Assistant Executive Engineer with effect from 1.1.1985.

5.3 According to learned advocate Mr. R.H. Mehta, for the respondent-Corporation, the employees, who were given the benefits of promotion to the post of Executive Engineer after retirement, had higher merit and were fulfilling the criteria for promotional post of Mechanical Engineer and, therefore, they were considered and recommended by the Departmental Promotion Committee for promotion. It is specifically submitted by Mr. Mehta that the petitioner was considered for promotion along with his batchmates who were eligible for being considered for the post of Executive Engineer (Mech.) with effect from 1.1.1991, and, out of three ACRs of the petitioner, which were relevant for consideration by the Departmental Promotion Committee, the gradings of 2 ACRs were low as per the required criteria for promotion to the post of Executive Engineer and, therefore, the petitioner was not empaneled for the post of Executive Engineer. According to the learned advocate Mr. R.H. Mehta, for the respondent-Corporation, the petitioner was having 8th Class educational qualification with ITI certificate and, as per the statutory regulations, he was not entitled to be considered for promotion. However, on earlier occasion, the respondent-Corporation had given all the benefits to the petitioner and he was promoted to the post of Assistant Executive Engineer.

5.4 Lastly, learned advocate Mr. R.H. Mehta, for the respondent-Corporation, has submitted that the petition suffers from the vice of delay and laches in as much as the petitioner retired from service on 31.8.1992 whereas this petition was filed in August 1986. Therefore, delay for four years for agitating the grievance about promotion cannot be condoned as no satisfactory explanation was given by the petitioner to condone the delay caused in filing the present writ petition and, therefore, apart from merit, the petition deserves to be rejected on the ground of delay itself.

6. Having considered the rival submissions of the learned advocates for the parties, this Court is unable to agree with the submissions of the learned advocate for the petitioner. The grievance of the petitioner was

about non-promotion to the post of Executive Engineer (Mech.). It is clearly borne out from the record of petition that the petitioner had possessed the basic educational qualification of passing Std.VIII examination with ITI certificate. Initially, the petitioner was appointed as Fitter on 28.3.1968 and was given promotion to the post of chargeman Assistant Engineer (Foreman) on 1.4.1982. Thereafter, as per the criteria laid down in the recruitment rules framed by the respondent-Corporation for promotion to the post of Executive Engineer (Mech.), the requirements for further promotion to the post of Assistant Engineer (Mech.), are (i) six years of experience as chargeman; (ii) two years of experience for an employee possessing a Degree in Engineering; and, (iii) four years of experience for an employee possessing a Diploma. Since the petitioner was promoted from the post of chargeman to the post of Assistant Engineer (Mech.) that too under the relaxed criteria with effect from 1.4.1982, under the statutory regulations, the petitioner was not entitled to be promoted as such, and the procedure undertaken by the respondent-Corporation for promotion was delayed because of a stay order from the Sib Sagar Court, Assam. It is clearly established that, as required by the Recruitment and Promotion Regulations of 1980, the petitioner was not having either a degree or a diploma and, therefore, he was not even required to be considered for promotion to the post of Assistant Executive Engineer. However, the case of the petitioner was considered by the respondent-Corporation under the relaxed criteria of experience and qualification, for promotion to the post of Assistant Executive Engineer with effect from 1.1.1985. Not only that, but criterion for further promotion to the post of Executive Engineer from the post of Assistant Executive Engineer is four years on merit and six years for seniority-cum-fitness and the petitioner was not fulfilling this criterion also. However, looking to the overall grading, a separate criterion was adopted by the respondent-Corporation for considering the case of the employees by the Departmental Promotion Committee and the case of the petitioner was also considered at that time, but, due to lower ACR gradings of the petitioner, he was not empaneled and, therefore, no promotion was given to the petitioner to the post of Executive Engineer with effect from 1.1.1991. Therefore, in my view, the submission of the learned advocate, Mr. Rajni Mehta, for the respondent-Corporation, is well founded that, where the case of the employee is considered by the Departmental Promotion Committee on the basis of over all grading and performance by the Departmental Promotion Committee, and

not found fit for promotion on relevant criterion, the Court would be loathe in exercise of power under Article 226 of the Constitution of India and would not like to sit in appeal over the decision of the Departmental Promotion Committee. There is also a force in the submission of the learned advocate, Mr. Rajni Mehta, for the respondent-Corporation, that, out of three ACRs gradings, two ACRs gradings of the petitioner were low, which was below the criteria for promotion to the post of Executive Engineer (Mech.) and other Officers who have been promoted were fulfilling required criteria of ACRs and experience and, accordingly they were promoted. It is, emphathetically, denied by the respondent-Corporation in the affidavit-in-reply and the affidavit-in-sur-rejoinder that the petitioner was not considered for promotion to the post of Executive Engineer. On the contrary, his case was considered even on earlier occasion for the post of Assistant Executive Engineer on the basis of relaxed criteria, and, thereafter, again, for further promotion to the post of Executive Engineer (Mech.) also, the petitioner was considered and no violation of Recruitment and Promotion Regulations, 1980 was committed by the respondent-Corporation. Even the contention of the learned advocate Mr. T.R. Mishra, with regard to considering the case of other employees after retirement and having lower educational qualifications below SSC, and the petitioner was discriminated, has also no merit on the ground that the benefit, which was extended to other employees and even juniors to the petitioner, was also extended to the petitioner, but, the petitioner was not found suitable and not fulfilling the requisite criteria of higher grading in performance of his duties and, after considering the case of the petitioner, he was not found eligible and, therefore, he was not empaneled and such action of the respondent-Corporation cannot be termed as arbitrary. It is not open for the Court to enter into the arena of comparing the relevant inter-se merits of the candidates for promotion particularly when it is specifically pointed out in the affidavit-in-reply and the affidavit-in-sur-rejoinder that, due to lower ACR gradings, the case of the petitioner was not found fit, though considered. Further, the contention of the learned advocate for the petitioner of giving benefits to the junior employees and other lowly qualified employees even after their retirement, and promoting them to the post of Executive Engineer, has been answered in the affidavit-in-reply and the affidavit-in-sur-rejoinder wherein it is specifically stated that those employees were given promotion on he basis of their individual merit and higher grading, experience and qualification

and the case of the petitioner cannot be compared with those employees and, therefore, no discrimination is meted out to the petitioner and there is no violation of Article 14 of the Constitution of India. Therefore, the aforesaid contention of discrimination as raised by the learned advocate for the petitioner is also without merit. It is a well known principle in the matter of considering the case of an employee for promotion that the only available right to the employee is to be considered his case by the Departmental Promotion Committee and no other right is available unless it is established from the record that such an employee is not considered or if considered contrary to the Rules and Regulations. Having gone through the record of the case, no such fact is borne out and, on the contrary, though the petitioner was having lower educational qualification, he was promoted upto the post of Assistant Executive Engineer and his case was even further considered for promotion to the post of Executive Engineer (Mech.) and, therefore, the action of the respondent-Corporation of not promoting the petitioner to the post of Executive Engineer cannot be said to be arbitrary or discriminatory or violative of Article 14 of the Constitution of India and, therefore, no interference is called for.

7. The submission of the learned advocate for the petitioner with regard to non-communication of adverse remarks to the petitioner, relied upon by the Departmental Promotion Committee, for adjudging his merit, has also no force, since only those remarks, which are adverse, are required to be communicated, and not the assessment of grading of the employee about his performance generally. The respondent-Corporation has, specifically, stated that the low grading of the petitioner is not solely based on remarks only, but it is based on overall experience and qualification, which has weighed with the Departmental Promotion Committee and, therefore, considering over all merit of the petitioner, he was not found eligible by the Departmental Promotion Committee and, therefore, the said contention of non-communication of adverse remarks has no merit.

8. The present petition also suffers from the vice of delay and laches since it is filed almost after four years from the date of retirement of the petitioner. On 31st August 1992. The petitioner retired from service of the respondent-Corporation and this petition was filed in August 1996, and the claim of the promotion is agitated by the petitioner almost after four years from the date

of retirement. However, even on merits, as discussed in the foregoing paragraphs, no case is made out by the petitioner for his claim and the prayers made in the petition. There is, therefore, no substance in the present petition and the petition is required to be rejected.

9. In the result, the petition is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)